

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ROBERT C. JARVIS and RETHA D. JARVIS,  
Husband and Wife,

Plaintiffs,

vs.

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, a federal corporation; THE  
BANK OF NEW YORK MELLON, F.K.A. THE  
BANK OF NEW YORK, AS TRUSTEE FOR  
CWHEW, INC., HOME EQUITY LOAN ASSET  
BACKED CERTIFICATES, SERIES 2006-s10;  
and MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., Delaware  
corporation

Defendants.

Case No. 3:16-CV-05194-RBL

PLAINTIFF'S MOTION FOR ATTORNEYS'  
FEES

**NOTE ON MOTION CALENDAR:  
FRIDAY, MAY 12, 2017 (LCR 7(d)(3))**

**A. Motion.**

Plaintiffs ROBERT C. JARVIS and RETHA D. JARVIS, Husband and Wife, move for an award of \$11,062.50 for attorneys' fees. This motion is supported by the Declaration of Gregory F. Amann in Support of Motion for Attorneys' Fees filed herewith.

**B. Discussion.**

Federal Rule of Civil Procedure 54(d)(2) establishes the procedure for asserting a right to attorneys' fees and "related nontaxable expenses" where there is an independent source of authority for such awards. *MRO Communications, Inc. v. American Tel. & Tel. Co.*, 197 F.3d 1276, 1281 (9<sup>th</sup>

1 Cir. 1999). Unlike Rule 54(d)(1) which expressly preempts state law relating to specified costs, Rule  
 2 54(d)(2) does not limit the operation of state law procedures. Thus, in diversity actions, state law  
 3 governs the recovery of attorneys' fees and related nontaxable expenses so long as it does not run  
 4 counter to a valid federal statute or rule of court. *Garcia v. Wal-Mart Stores, Inc.*, 209 F.3d 1170,  
 5 1177 (10<sup>th</sup> Cir. 2000).

6 Plaintiffs are entitled to an award of attorneys' fees pursuant to RCW 4.84.330, which provides:

7 In any action on a contract or lease entered into after September 21, 1977, where such  
 8 contract or lease specifically provides that attorneys' fees and costs, which are incurred  
 9 to enforce the provisions of such contract or lease, shall be awarded to one of the  
 10 parties, the prevailing party, whether he or she is the party specified in the contract or  
 11 lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and  
 12 necessary disbursements.

13 Attorneys' fees provided for by this section shall not be subject to waiver by the  
 14 parties to any contract or lease which is entered into after September 21, 1977. Any  
 15 provision in any such contract or lease which provides for a waiver of attorneys' fees  
 16 is void.

17 As used in this section "prevailing party" means the party in whose favor final  
 18 judgment is rendered.

19 Fannie Mae's deed of trust provides that "Lender shall be entitled to recover its reasonable  
 20 attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security  
 21 Instrument."<sup>1</sup> In order for a contractual attorneys' fee provision to apply under RCW 4.84.330, the  
 22 contract containing the attorneys' fee provision must be "central to the controversy." *Hemenway v.*  
 23 *Miller*, 116 Wn.2d 725, 742, 807 P.2d 863 (1991). The central issue of this case was the  
 24 enforceability of Fannie Mae's deed of trust. Attorneys' fees were awarded pursuant to RCW  
 4.84.330 under similar facts in *Kirsch v. Cranberry Financial, LLC*, No. 69959-8-I, 2013 WL  
 6835195 (Wn. App. Div. I 2013). In *Kirsch*, plaintiff filed a quiet title action under RCW 7.28.300

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<sup>1</sup> Dkt. #39 (Fannie Mae's Response to Motion for Summary Judgment, Exhibit B at 16).

1 claiming that the statute of limitations had run on defendant's promissory note and deed of trust  
 2 because defendant did not take action to enforce the note and deed of trust within six years after  
 3 acceleration of the debt. *Id.* at \*2. The court held that the statute of limitations had indeed run, and  
 4 awarded the plaintiff reasonable attorneys' fees and costs pursuant to RCW 4.84.330 based on a  
 5 provision in the promissory note providing that the debtor shall pay the note holder's expenses of any  
 6 nature, including reasonable attorney fees and costs, incurred to enforce the note's provisions. *Id.* at  
 7 \*7. The language of RCW 4.84.330 is mandatory and does not allow for an exercise of discretion in  
 8 deciding whether to award fees. *Farm Credit v. Tucker*, 62 Wn. App. 196, 207, 813 P.2d 619 (1991).

### 9 C. Conclusion

10 Plaintiffs respectfully request that the Court award them attorneys' fees in the amount of  
 11 \$11,062.50 against Defendant Federal National Mortgage Association (Fannie Mae).

12 Dated this 25th day of April, 2017.

13 VSI Law Group, PLLC

14 By: /s/Gregory F. Amann

15 Gregory F. Amann, WSBA No. 24172

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**CERTIFICATE OF SERVICE**

I certify on the date indicated below I caused a copy of the foregoing document to be filed with the clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send email notification of such filing to the attorneys of record.

I affirm under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED April 25, 2017, at Tacoma, Washington.

By: /s/ Gregory F. Amann  
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